THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.13654 OF 2004

Between:

The A.P.Urban & Town Cooperative Bank
Employees Assocaition, Bobbili Unit,
Vizianagaram District rep. by its
Unit Secretary S.V.Dharma Rao

....Petitioner

A n d

1. Government of A.P. Cooperation Department,
rep by its Secretary, Secretariat,
Hyderabad and 4 others.

.... Respondents

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ORAL ORDER:

A.P. Urban and Town Cooperative Bank Employees Association, Bobbili Unit, Vizainagaram District has filed the writ petition assailing Rule 2(o) of A.P.Cooperative Societies Rules, 1964 (Rules), as amended in

G.O.Rt.No.1083, Agriculture and Cooperation (Coop.IV) Department, dated 01-12-2003, as unconstitutional and violative of Articles 14 and 21 of the Constitution of India and seek the consequential relief of setting aside of the proceedings of the third respondent issued in R.C.No.1/2004-SO, dated 22-07-2004. Petitioner also seeks a direction to the respondents to pay full salaries to its members from April 2004 onwards and to continue to pay the salaries month after month.

Rule 2(o) of the Rules, as it stood prior to its amendment (impugned in this writ petition), defined the expression "working capital" as including such portion of the reserve fund, other reserves appropriated out of profits, paid up share capital, loans and deposits received by the society and debentures issued, by the society, as have not been locked up in buildings and other fixed assets. By the amendment "*outstanding over dues and accumulated losses*" of a cooperative society are also included in the definition of the expression "working capital". As a consequence of this amendment, contends the petitioner, the corpus of the working capital would be reduced, as a result of which, qua the provisions of Section 116(c) of the A.P.Cooperative Societies Act, 1964 (the Act), the expenditure towards pay and allowances of the employees of a society shall have to be limited so as not to exceed 2% of the working capital, and retrenchment of employees or reduction of their pay becomes inevitable.

Section 116(c) of the Act enjoins a fiscal discipline on the establishment expenditure of a cooperative society, whereby a society is consecrated a discretion to fix staff pattern, pay scale and other allowances of its employees with the prior approval of the Registrar of Cooperative societies subject to the condition that the expenditure towards pay and allowances of the employees not exceed 2% of the working capital or 30% of the gross profit, in terms of actuals in a year, whichever is less.

Petitioner does not assail the provisions of Section 116(c) of the Act. To guide the accounting practices and to provide clarity to the process of identification of what constitutes "working capital", the expression "working capital" has been redefined by the impugned amendment to include the components of outstanding over dues and accumulated losses also. The

practice of cooperative societies computing working capital without taking into consideration the outstanding over dues payable to the society or what could be called non-performing assets or the accumulated losses was leading to a situation where by an artificial process of computation and contrary to healthy accounting practices, societies were showing a higher component of working capital which was a situation at variance with the fiscal reality of a cooperative society's health. To remedy this mischief, the amendment was brought about. The amendment *per se* does not and is not demonstrated to be in transgression of either Articles 14, 16 or 21 of the Constitution of India. The claim of the petitioners that the impugned amendment to Rule 2(o) of the Rules is unconstitutional and violative of Articles 14 and 21 of the Constitution of India must, therefore, fail.

The other grievance of the petitioner is directed against the third respondent's proceedings dated 22-07-2004. The proceedings is an order of the Special Officer, Cooperative Urban Bank Limited, Bobbili deciding to pay salary/advances to employees to the extent of 50% of their last drawn salary subject to each of them furnishing an undertaking to reimburse the amount to the bank along with interest at 6% per annum, in case it is latter found that they are not entitled to the payment of the said amount. This interim measure has been taken by the third respondent in the context of a finding recorded in the same order, that as per the norms under Section116 (c) of the Act, the bank is not in a position to pay salaries to the employees. It is therefore the recorded fact that the fiscal discipline under Section 116(c) of the Act does not permit the payment of any salaries to its employees by the third respondent bank. Nevertheless the third respondent has decided to pay 50% of the salaries subject to an undertaking given by the employees. Petitioner has not demonstrated before this Court that the statement in the proceedings dated 22-07-2004, that the third respondent bank is not in a position to pay any salaries to its employees is a factually incorrect statement, nor it is established that the third respondent bank has failed to pay salaries to its employees despite a financial capacity to do so within the statutory limitations under Section 116(c) of the Act.

In any event, the grievance of the petitioner or other employees of the third respondent bank as to non-payment of salaries by the third respondent, an

institution which is neither pleaded, urged or demonstrated to be an instrumentality of the State, is not a grievance which has an adjudicative disposition before this Court under Article 226 of the Constitution of India. The residuary relief sought by the petitioner is a direction to the respondent to pay full salaries to its members from April, 2004 onwards. No such direction can be granted for a plurality of reasons:

a. It is not established that the third respondent-bank has refused to pay full salaries to its employees despite having the financial capacity to do so within the statutory limits set out in Section 116(c) of the Act; and

b. No such direction could be issued to a private body which is not a State or instrumentality of the State in proceedings under Article 226 of the Constitution of India.

On the aforesaid analysis, there are no merits in the writ petition and the same is accordingly dismissed. The petitioner is at liberty to pursue his appropriate remedies before an appropriate forum. No order as to costs.

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30-08-2005.

Lrkm